

Montana Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau

ENVIRONMENTAL ASSESSMENT
For Routine Actions with Limited Environmental Impact

Part I. Proposed Action Description

1. Applicant/Contact name and address: Ursula and Gerhard Vond der Ruhr
2455 Brookspring Dr.
Brookfield, WI 53005
2. Type of action: Application To Change A Water Right No. 76M 30030987
3. Water source name: Ninemile Creek tributary to the Clark Fork River
4. Location affected by project: Ninemile Creek in T15N R22W Sections 17, 20, 21, 28 in Missoula County
5. Narrative summary of the proposed project, purpose, action to be taken, and benefits:

The applicant proposes to temporarily change 5 years a portion of water right permits 76M 1821-00 and 76M 7454-00 from irrigation to instream flow for fisheries. The applicant has entered into a split season agreement with the Montana Water Trust in which the first part of the season irrigation will continue as per the historic practice, after July 1 the water that would have been used for irrigation on the combined 380 acre place of use will be left instream for fisheries use. The proposed protected reach begins at the point of diversion for these water rights at T15N R22W SW of SW of NE of Sec 17 and ends at the confluence of Ninemile Creek and the Clark Fork River, 2.92 miles downstream at T15N R22W SW of NE of SW of Sec 28. The total volume of water to be changed from irrigation to instream flow is 616.48 acre-feet from July 1 to November 1. Water right 76M 1821-00 with a priority date of March 18th, 1974 supplies 243.33 acre-feet with a max flow rate of 1.25 cfs, while water right 76M 7454-00 with a priority date of Feb 10th, 1976 supplies 373.15 acre-feet with a max flow rate of 1.33 cfs. 76M 1821-00 was historically used to irrigate a combined total of 380 acres, 230 of which have supplemental water from five other water rights (76M 149169, 68, 67, 66, and 65). The supplemental water rights are from both Rock and Isaac Creeks, which were the primary sources of irrigation water used on the 230 acres between the dates of April 1 to July 1. Water right permit no. 76M 7454-00 provided the primary source of irrigation water on the 230 acres between the dates of July 1 and November 1, when Rock and Isaac Creeks become unreliable and sometimes run dry. The applicant will no longer use water right permit nos. 76M 1821 and 76M 7454 from Ninemile Creek for irrigation between the dates of July 1 and November 1, and dedicate

the water historically consumed to instream flows in Ninemile Creek. Per the split season agreement, 76M 8121 will still be used for irrigation between April 1 and July 1.

Dedicating water to instream flow will benefit the fisheries resource in Ninemile Creek. The instream fisheries use will occur in an approximately 2.92 mile reach of Ninemile Creek.

The DNRC shall issue a change authorization if the applicant proves the criteria in 85-2-402 MCA are met.

6. Agencies consulted during preparation of the Environmental Assessment:
(include agencies with overlapping jurisdiction)

Montana Historical Society	Cultural Resource File Search
Montana Natural Heritage Program	Species of Concern
Montana Department of Fish, Wildlife and Parks	2005 Dewatered Stream List
Montana Department of Environmental Quality	303(d) list of impaired streams

Part II. Environmental Review

1. Environmental Impact Checklist:

PHYSICAL ENVIRONMENT

WATER QUANTITY, QUALITY AND DISTRIBUTION

Water quantity - Assess whether the source of supply is identified as a chronically or periodically dewatered stream by DFWP. Assess whether the proposed use will worsen the already dewatered condition.

The Department of Fish, Wildlife and Parks (FWP) lists Ninemile Creek as periodically dewatered (per FWP Dewatering Concern Areas, May 2005) in the lower three miles of the stream. Streams are classified as periodically dewatered when dewatering is a significant problem only in drought or water-short years. The applicant is proposing to take a water right for a consumptive use (irrigation) and change a portion of it to a non-consumptive use (instream flow). This will improve stream flow conditions in the proposed 2.9 mile protected reach, and may improve the dewatered condition in the lower three miles of Ninemile Creek. The proposed change to instream flow will not worsen the periodic dewatering of Ninemile Creek.

Determination: No impact.

Water quality - Assess whether the stream is listed as water quality impaired or threatened by DEQ, and whether the proposed project will affect water quality.

The Department of Environmental Quality (DEQ) does list Ninemile Creek as water quality impaired or threatened. DEQ identifies Ninemile Creek as fully supporting agricultural, industrial and recreational uses, and partially supports aquatic life and cold water fisheries. The probable causes of the impaired listing are low flow alterations from agricultural diversions and sedimentation/siltation from abandoned mine sites and streambank alterations. The proposed project will not adversely affect water quality. The purpose of the project is to leave water instream to benefit fisheries and the aquatic ecosystem.

Determination: No impact.

Groundwater - *Assess if the proposed project impacts ground water quality or supply. If this is a groundwater appropriation, assess if it could impact adjacent surface water flows.*

Determination: N/A

DIVERSION WORKS - *Assess whether the means of diversion, construction and operation of the appropriation works of the proposed project will impact any of the following: channel impacts, flow modifications, barriers, riparian areas, dams, well construction.*

To exercise the instream portion of this right, no means of diversion or conveyance are needed other than the natural stream channel. There will be no construction that would impact the stream channel, or create a barrier to fish migration. There are no dams associated with this project. The project will not alter groundwater quality or quantity; therefore well construction will not be impacted. The project will result in flow modifications, however, the end result will be more water flowing in Ninemile Creek, to the benefit of aquatic life and cold-water fisheries.

Determination: No impact.

UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES

Endangered and threatened species - *Assess whether the proposed project will impact any threatened or endangered fish, wildlife, plants or aquatic species or any "species of special concern," or create a barrier to the migration or movement of fish or wildlife. For groundwater, assess whether the proposed project, including impacts on adjacent surface flows, would impact any threatened or endangered species or "species of special concern."*

The Montana Natural Heritage Program was contacted to determine if there are any threatened or endangered fish, wildlife, plants or aquatic species or any "species of special concern", that could be impacted by the proposed project.

The Montana Natural Heritage Program identified the following animal species, Bull Trout, Cutthroat Trout, Canadian Lynx, Gray Wolf, Bald Eagle, Western Skink, Wolverine, Fisher and Olive-sided Fly Catcher occurring within the vicinity of Township 15 North, Range 22 West, Missoula County.

Since the proposed change in water use to instream flow will require no site disturbances, plant species should not be impacted. This change in purpose to instream flow will benefit aquatic life in Ninemile Creek, therefore Bull Trout and Cutthroat Trout should not be impacted. This change to instream flow will not result in the loss or alteration of any Lynx, Gray Wolf, or other wildlife habitat.

Determination: No impact.

Wetlands - Consult and assess whether the apparent wetland is a functional wetland (according to COE definitions), and whether the wetland resource would be impacted.

This project does not involve any wetlands.

Determination: No impact.

Ponds - For ponds, consult and assess whether existing wildlife, waterfowl, or fisheries resources would be impacted.

This project does not involve any ponds.

Determination: No impact.

GEOLOGY/SOIL QUALITY, STABILITY AND MOISTURE - Assess whether there will be degradation of soil quality, alteration of soil stability, or moisture content. Assess whether the soils are heavy in salts that could cause saline seep.

The proposed project will not cause any degradation of soil quality or alteration of soil stability or moisture content. The proposed project will result in substantially less water being applied to soils for irrigation. The place of use for these water rights has been irrigated for many decades without soil degradation. The soils are not high in salts and saline seep has not occurred. The change to instream flow will not affect soil stability or moisture content.

Determination: No impact.

VEGETATION COVER, QUANTITY AND QUALITY/NOXIOUS WEEDS - Assess impacts to existing vegetative cover. Assess whether the proposed project would result in the establishment or spread of noxious weeds.

The change of purpose to instream flow will not result in alterations in vegetative cover or the spread of noxious weeds as there is no construction associated with this project.

Determination: No impact.

AIR QUALITY - Assess whether there will be a deterioration of air quality or adverse effects on vegetation due to increased air pollutants.

There will be no source of pollutants associated with the change in water use that will alter air quality.

Determination: No impact.

HISTORICAL AND ARCHEOLOGICAL SITES - *Assess whether there will be degradation of unique archeological or historical sites in the vicinity of the proposed project.*

There will be no construction or other activities that could degrade unique archeological or historical sites. According to the Montana Historical Society, there are no known unique archeological or historical sites in the vicinity of the proposed project that may be impacted.

Determination: No impact.

DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AND ENERGY - *Assess any other impacts on environmental resources of land, water and energy not already addressed.*

None identified.

Determination: No impact.

HUMAN ENVIRONMENT

LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS - *Assess whether the proposed project is inconsistent with any locally adopted environmental plans and goals.*

There are no locally adopted environmental plans or goals.

Determination: No impact.

ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES - *Assess whether the proposed project will impact access to or the quality of recreational and wilderness activities.*

Reducing the applicant's diversion of Ninemile Creek water for irrigation may improve recreational activities provided by Ninemile Creek. The proposed project will not impact access to or the quality of recreational and wilderness activities.

Determination: No impact.

HUMAN HEALTH - *Assess whether the proposed project impacts on human health.*

The proposed change in water use may improve water quality in Ninemile Creek.

Determination: No impact.

PRIVATE PROPERTY - Assess whether there are any government regulatory impacts on private property rights.

Yes___ No XX If yes, analyze any alternatives considered that could reduce, minimize, or eliminate the regulation of private property rights.

Determination: No impact.

OTHER HUMAN ENVIRONMENTAL ISSUES - For routine actions of limited environmental impact, the following may be addressed in a checklist fashion.

Impacts on:

- (a) Cultural uniqueness and diversity? No impact.
- (b) Local and state tax base and tax revenues? No impact.
- (c) Existing land uses? A second hay harvest will be eliminated on 380 acres.
- (d) Quantity and distribution of employment? No impact.
- (e) Distribution and density of population and housing? No impact.
- (f) Demands for government services? No impact.
- (g) Industrial and commercial activity? No impact.
- (h) Utilities? No impact.
- (i) Transportation? No impact.
- (j) Safety? No impact.
- (k) Other appropriate social and economic circumstances? No impact.

2. Secondary and cumulative impacts on the physical environment and human population:

Secondary Impacts None identified.

Cumulative Impacts None identified.

3. Describe any mitigation/stipulation measures: None identified.

4. **Description and analysis of reasonable alternatives to the proposed action, including the no action alternative, if an alternative is reasonably available and prudent to consider:** No alternative identified.

PART III. Conclusion

1. **Preferred Alternative** N/A

2 **Comments and Responses** N/A

3. *Based on the significance criteria evaluated in this EA, is an EIS required?*
Finding: Yes____ No **XX**

If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action:

This project has little to no negative environmental impact. There is no site construction or substantial change in management related to this instream flow.

Name of person(s) responsible for preparation of EA:

Name: Ethan Mace

Title: Surface Water Hydrologist

Date: 08/27/2008